87-961

NO.

in the
Supreme Court
of the
United States

OCTOBER TERM, 1986

GEORGE L. ONETT,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

SHALLE STEPHEN FINE
(Counsel of Record)
46 S. W. First Street
Miami, Florida 33130
305/358-1515
Attorney for Petitioner

13 pp

QUESTIONS PRESENTED FOR REVIEW

1

IT WAS A DENIAL OF FUNDAMENTAL DUE PROCESS TO REFUSE THE PETITIONER'S APPLICATION FOR SUBPOENAES AND TO DENY HIM THE RIGHT TO COMPULSORY PROCESS AND THE PRESENTATION OF WITNESSES.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the title of the case.

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OFFICIAL REPORTS

The Florida Bar vs. George Onett, 504 So. 2d 388 (Fla. 1987)

GROUNDS ON WHICH JURISDICTION IS INVOKED

The opinion of the Supreme Court of Florida herein sought to be reviewed was entered February 26, 1987. A timely filed Petition for Rehearing was denied by order entered April 15, 1987.

The statutory provision believed to confer on this court jurisdiction to review the judgment and opinion in question by Writ of Certiorari is 28 United States Code, §1257 (3)

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

1) Constitution of the United States, Article XIV, §1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

Pertinent portions of the Florida Bar integration rule are quoted in the Statement of the Case and Argument as appropriate.

STATEMENT OF THE CASE

This cause comes to this court on the Petition of George L. Onett for review of a judgment disbarring him entered in the Supreme Court of Florida. (Appendix 1 et seq.; further references in this Petition to the appendix hereto will be made by use of the symbol "A" with appropriate page number.)

The parties will be referred to herein by proper name or by standing here or below as appropriate.

The Petitioner, George L. Onett, was admitted to the Florida Bar on November 4, 1966. He had never been disciplined by the Bar prior to the instant case.

The Florida Bar is an integrated Bar created by the Supreme Court of Florida under an integration rule promulgated by the Supreme Court. The Preamble to the integration rule specifically states in pertinent part:

> ". . . the following principles are expressly adopted by this court:
>
> (a) The Florida Bar, a body created by and existing under the authority of this court, is charged with the maintenance of the highest standards and obligations of the profession of law, and to that end is vested by this court, in the exercise of its inherent powers over the Florida Bar as an official arm of this court, with the necessary powers and authority . . .
>
> (d) This court has the inherent power and duty . . . to determine what constitutes

> grounds for discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established."

The exclusive jurisdiction of the Supreme Court over discipline of persons admitted to the practice of law is administered pursuant to Article XI of the integration rule. Pursuant to Article XI, the Florida Bar commenced the proceedings under review here by filing a complaint against Petitioner Onett in the Supreme Court of Florida. Under the integration rule, disciplinary proceedings such as this are original proceedings in the Supreme Court of Florida.

That complaint (A. 6 et seq.; amendment A. 10) charged that Onett:

a) Sought to extort $15,000.00 from a Jacksonville, Florida restauranter in connection with the restauranter's efforts to obtain a liquor license for his restaurant; and

b) Sought to defraud the citizens of the State of Florida, the Department of Business Regulation and the Division of Alcoholic Beverages and Tobacco with regard to their review and approval of the restauranter's liquor license application by concealing relevant information; and

c) Perjured himself before a Federal Grand Jury; and

d) As a result of the foregoing was convicted of six felony counts by the United States District Court for the Middle District of Florida.

The Supreme Court of Florida appointed a referee to hear the matter and pursuant to notice, the matter was brought on for hearing.

The Bar produced no live witnesses in its main case. It introduced three exhibits and rested. Exhibit No. 1 was a copy of the indictment against the Respondent in the United States District Court for the Middle District of Florida. Exhibit 2 was a certified copy of the judgment and commitment order in the United States District Court In and For The Middle District of Florida evidencing Mr. Onett's conviction on several criminal charges. Exhibit 3 was a copy of the initial appeal in the criminal case, *United States of America vs. George L. Onett*, 725 F.2d 1561 where the Eleventh Circuit affirmed the conviction.

Mr. Onett called as his witness Charles L. Nuzum who testified that immediately prior to his retirement he was director of the Division of Alcoholic Beverages and Tobacco of the State of Florida. Prior to that time he was special agent for the Federal Bureau of Investigation for 22 years and at the time he retired from the Bureau he was deputy chief of the white collar crime section of the general investigative division at FBI Headquarters in Wshington. In the Beverage Department, the only person he reported to was Richard Burroughs, the head of the Department of Business Regulation. It was Mr. Nuzum's duty to pass on applications for liquor licenses where there was a

problem. Mr. Nuzum's approval or disapproval was final administrative action subject only to appeal to the courts. Mr. Nuzum, when he took his post with the State of Florida, took an oath of office and was an officer of the State of Florida.

Mr. Nuzum, in 1979 or 1980, was made aware of a liquor license application for a place called Abbott's Restaurant in Jacksonville, Florida. It was brought to his attention by his chief of licensing. The problem was that an application had been made for Abbott's Restaurant by Mrs. Peter Abbott, and the problem which they envisioned was that Mr. Peter Abbott should be on the application too.

Mr. Nuzum then had a visit from Michael Collins, an agent with the Federal Bureau of Investigation, and they discussed Abbott's Restaurant. Collins told Nuzum that the Bureau was conducting a sting operation at Abbott's Restaurant, that the investigation then dealt with alleged corruption in public life and among public officials in the Jacksonville area. He further told Nuzum that there was electronic surveillance and other technical surveillance at the Abbott's Restaurant and that information had been obtained that there would be an effort made to obtain a liquor license, a special restaurant license for Abbott's Restaurant through influence of some nature with the Department of Business Regulation. Mr. Collins told Mr. Nuzum that Mr. Abbott was a convicted felon and that Abbott was not actually his correct name but a name given to him under the witness protection program and he showed Mr. Nuzum a copy of Abbott's rap sheet.

Subsequent to this, Mr. Nuzum was visited by Mr. Onett. Mr. Nuzum told Mr. Onett that Mr. Abbott would have to be on the application. There was some discussion as to whether Abbott should be on the application and by the end of the meeting, Onett told Nuzum that Abbott would be disclosed.

The application was then amended at Mr. Onett's instance to include Peter Abbott as an accommodation endorser and Mr. Nuzum testified that after the amendment, the man was obviously an applicant within every sense of the word. Mr. Nuzum's legal counsel reviewed the amended application for Mr. Nuzum and told him that Abbott was an applicant and an interested party.

Abbott was then fingerprinted and his fingerprint card was processed through the FBI. When Abbott's fingerprint card was returned to the Bureau, there was no record because Abbott was under the witness protection program.

Nuzum testified that from the time Onett put Abbott on the application, Nuzum was in a position to deny the liquor license on the basis that Abbott was a convicted felon which he knew from his conversation with Collins. Nuzum did not do this because he was accommodating the FBI. No improper influence was exerted or attempted to be exerted on Nuzum by Onett.

Onett had asked in writing that subpoenaes be issued by the referee (A. 28 et seq.). One of the subpoenaes to Mr. Nuzum was in fact issued and Mr. Nuzum testified. The other subpoenaes where to be directed—one to the Honorable John Rawls and the

other to Honorable John Moore, the Federal District Judge who presided over Respondent's non-jury trial. The court refused to issue this process and renewed his ruling at hearing (A. 44.).

Onett, through counsel, then proffered (A. 35 et seq.).

The substance of the proffer was that Judge Rawls was general counsel and custodian of the records of the Florida Judicial Qualifications Commission, an agency established under the Florida Constitution to review the conduct of judicial officers and, if necessary, to discipline them. Judge Rawls' testimony and the records of that commission would reflect that Judge Moore, the trial judge who tried and convicted Mr. Onett in a non-jury trial, had been the chairman of the Florida Judicial Qualifications Commission prior to his ascent to the federal bench. Those records would also reflect that Judge Moore had pre-trial contact with the FBI investigation which produced Mr. Onett's indictment. This contact, as reflected in those records, would have been sufficient under the present federal recusal statute to make it appear to a reasonable man that Judge Moore could not have been impartial in Onett's trial, even if the case were tried with a jury and was not tried non-jury. Onett further proferred that Judge Moore, in a chambers conference held in his chambers on July 12, 1983, had indicated that he had some peripheral contact with the investigation and he also indicated that he had totally forgotten about it and at the trial of Onett, he did not have time to think about the past because of the pressure of his cases. Onett further proferred that Judge Moore would, if he had the opportunity to review Judge Rawls' evidence and the documents of the Judicial Qualifications Commission concede candidly that he did

not meet the standard of the recusal statute. Of course, upon this admission, the conviction would have to be voided.

Mr. Onett took the stand and testified that he had not offered anyone anything improper in connection with the Abbott license application and further, there was never any evidence adduced at trial before Judge Moore that he had made such an offer. He testified that he had received a $7,500.00 fee for his participation in the license application as a lawyer and that fee was reported on his federal income tax return and income tax was paid on that fee and it was not divided with anyone for any reason in any way, shape or form. Mr. Onett testified that he did not know that Peter Abbott was a convicted felon at the time of the amended application which Onett procured after talking with Nuzum.

In fact, at the time the amended application was filed, Mr. Onett had never met Peter Abbott or Mrs. Abbott. He was hired by another lawyer (who was representing the Abbotts) through a telephone conversation. He never met Peter Abbott until three months after the amended application was filed and never met Jean Abbott, Peter's wife. He never had any financial interest in Abbott's Restaurant or the liquor license except as a lawyer.

The referee filed a report (A. 15 et seq.) which is essentially a bare bones report which tracks the complaint word for word and recommends disbarment.

Onett petitioned for review of the referee's report by the Supreme Court of Florida (A. 22).

Briefs were submitted by Onett and by the Bar and Onett requested oral argument. Notwithstanding this, and notwithstanding that the integration rule provides for oral argument in terms as follows:

> "Rule 11.09: Review by Supreme Court (3)(d) Oral Argument. Requests for oral argument shall be filed in every case wherein a petition for review is filed at the time of filing the first brief. If no request is filed, the case will be disposed of without oral agreement unless the court orders otherwise."

Notwithstanding the request for oral argument, at the direction of the chief justice, the case was submitted to the court without oral argument (A. 24).

The court rendered the opinion to which certiorari is here sought (A. 1 et seq.). A timely filed Petition for Rehearing (A. 25 et seq.) was denied (A. 5) and this Petition follows:

In his Answer and Affirmative Defenses to the Complaint filed before the referee (A. 12 et seq.) your Petitioner raises the validity of his conviction by saying:

> "2. . . . but denies that he has been validly convicted thereof. Answering the third sentence thereof, he admits the authenticity of the judgment and commitment order attached as Exhibit "A" but denies that it serves as conclusive proof of his misconduct. On the contrary, he incorporates his affirmative defenses set forth below.

> 3) Affirmatively answering, he avers that his asserted conviction in the case identified in Exhibit "A" to the complaint, was had after waiver of jury trial by a court who in respondent's belief was disqualified from sitting as judge in his cause. Further affirmatively answering, Respondent asserts and avers that for the Florida Bar to attempt to proceed to impose any punishment or sanction upon him resulting from that conviction and proceeding, his civil rights as preserved to him by the constitution of the United States and by federal statutes, specifically including without limitation, Title 28 United States Code, §1983 and would subject the Florida Bar to an action for an injunction pursuant to that statute and other available remedies."

After the filing of the referee's report and Onett's Petition for Review to the Supreme Court, he raised the question in the following terms as recited by the court in its opinion (A. 2):

> "In support, Respondent argues that he was denied due process before the referee because he was not permitted to subpoena witnesses whose evidence would have vitiated the federal convictions and shown that he was guilty of no wrongdoing."

He reiterated this position in his Petition for Rehearing (A. 25 et seq.).

ARGUMENT

I

IT WAS A DENIAL OF FUNDAMENTAL DUE PROCESS TO REFUSE THE PETITIONER'S APPLICATION FOR SUBPOENAES AND TO DENY HIM THE RIGHT TO COMPULSORY PROCESS AND THE PRESENTATION OF WITNESSES.

This court has held that a lawyer is entitled to procedural due process in a state disbarment proceeding. *Re Ruffalo*, 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968). Indeed, even if this were an administrative proceeding instead of a proceeding in the judicial branch, due process would require that rules promulgated and established be complied with. See *Accardi vs. Shaughnessy*, 347 U.S. 260 74 S. Ct. 499, 98 L. Ed. 681 (1954); *Service vs. Dulles*, 352 U.S. 363, 77 S. Ct. 1152, 1 L. Ed. 2d 1403 (1957).

In like manner, the Supreme Court of Florida has held that a disciplinary proceeding by the Florida Bar is a penal (although not criminal) proceeding and that due process requirements must be observed. *Florida Bar vs. Quick*, 279 So. 2d 4 (Fla. 1973).

As part of due process, a Florida Court of last resort has held that compulsory process is a vital part of the American concept of due process and a fair hearing, even in a quasi judicial proceeding, *Drogaise vs. Martine's Incorporated*, 118 So. 2d 95 (1 DCA Fla. 1960).

The Florida Supreme Court in *State Ex Rel Florida Bar vs. Evans*, 94 So. 2d 730 (Fla. 1957) said in pertinent part:

> ". . . In a disbarment proceeding based on conviction of a crime, the proof of conviction and an adjudication of guilt are sufficient to establish a prima facie case for disciplinary action. Due process, however, requires that the accused lawyer shall be given full opportunity to explain the circumstances and otherwise offer testimony in excuse or mitigation of the penalty."

In the case at bar, the judgment of conviction is the only evidence upon which your Petitioner could be adjudged guilty of any wrongdoing. The indictment is certainly not evidence. The testimony of Mr. Nuzum does not implicate your Petitioner but exonerates him and of course your Petitioner's testimony does not harm him. This disbarment must be sustained on the basis of the judgment of conviction.

Under the terms of the proffer as made, it is clear that the judgment of conviction could not stand and would be vitiated if this Petitioner had been afforded his due process rights to subpoena Judge Rawls and the records of the JQC and to subpoena Judge Moore and present him with the record of his pre-trial contact with this investigation. The refusal of the referee to issue process and its sanctification by the opinion to which certiorari is here sought deprives your Petitioner of the essential right to rebut by evidence the document upon which the charge against him is based. Furthermore, it deprives him of the right given to him to explain the

circumstances and otherwise offer testimony in excuse or mitigation of the penalty.

It must be emphasized in this case that on the record as adduced, Judge Moore has admitted pre-trial contact with the investigation. The question that remains to be decided is not whether Judge Moore had contact with the investigation before he ascended the federal bench, but the extent of that contact. We urge that if Judge Moore were in fact presented with the evidence of that contact and its extent, he would do the right thing. We are not asserting that he is corrupt (although we think it is a makable argument that he is bullheaded). Quite the contrary. What we asked and were deprived of was the opportunity to let Judge Moore see the full record, hear the evidence of Judge Rawls and do the right thing which would be on the basis of the proffer and could only be to state on the record that the conviction should be vitiated and to in fact vitiate that conviction.

We are not attempting here to retry the criminal case. We are attempting here to bring into focus the facts which developed post judgment which bear on the judgment of conviction.

We respectfully suggest that this case goes to the fundamental quality of the judicial system and its functioning. The manner in which it has been handled and swept under the rug creates an aura ill suited to the executive branch, much less to the judicial. Either the Supreme Court of Florida denied Onett fundamental due process when it denied him the subpoenaes he needed to establish that the charge against him could not stand or at least to mitigate and explain it, or on the other hand if we take the record in its present

condition with the proffer, there can be no disbarment of Onett because there can be no valid conviction. We respectfully suggest that to hold that a judgment of conviction entered by a judge clearly disqualified on the record can be the basis of a penal action against Onett without a hearing on the merits of Onett's contention is more than an exaltation of form over substance, it is a denial of the basic right to present an effective defense.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to James N. Watson, Jr., Esq., Branch Staff Counsel, The Florida Bar, Tallahassee, Fl 32301, this 14th day of July, 1987.

SHALLE STEPHEN FINE

Appendix

SUPREME COURT OF FLORIDA

No. 67,622

THE FLORIDA BAR

Complainant,

vs.

GEORGE ONETT

Respondent.

[February 26, 1987]

PER CURIAM.

This disciplinary proceeding against George L. Onett is before us on complaint of The Florida Bar and the report of the referee. The referee recommends that Onett be disbarred. Onett petitions this Court for review of the referee's findings of fact and recommendations of guilt and discipline. We have jurisdiction, article V, section 15, Florida Constitution, and approve the referee's findings and recommendations.

Respondent was convicted in federal district court of six felony charges: mail fraud conspiracy, conspiracy to obstruct interstate commerce by extortion, obstruction and attempted obstruction of interstate commerce by extortion, mail fraud, and two counts of perjury. Respondent was suspended from the practice of law effective October 18, 1982, under Florida Bar Integration Rule, article XI, rule 11.07(3). Based on

these convictions, the referee recommended that respondent be found guilty of violating Florida Bar Code of Professional Responsibility Disciplinary Rules 1-102(A)(1) (violating a disciplinary rule), 1-102(A)(3) (illegal conduct involving moral turpitude), 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation), 1-102(A)(5) (conduct prejudicial to the administration of justice), 1-102(A)(6) (conduct that adversely reflect on fitness to practice law), as well as Florida Bar Integration Rule, article XI, Rule 11.02(3)(a) (commission of an act contrary to honesty, justice or good morals).

Respondent urges that the referee's recommendations of guilt and disbarment should be disapproved. In support, respondent argues that he was denied due process before the referee because he was not permitted to subpoena witnesses whose evidence would have vitiated the federal convictions and shown that he was guilty of no wrongdoing. Moreover, respondent urges, it was harmful error to introduce into evidence the federal indictment because it contained counts and allegations which were not proven at trial.

Respondent's argument merits only brief comment. Respondent attempted to subpoena the presiding judge in the federal trial and the general counsel of the Florida Judicial Qualifications Commission, purportedly for the purpose of showing that the presiding judge should have recused himself from the trial. Respondent does not deny that he has been convicted and those convictions affirmed on appeal, *United States v. Haimowitz*, 725 F.2d 1561 (11th Cir.), *cert. denied*, 469 U.S. 1077 (1984). Instead, he asks that we go behind those convictions

and, essentially, retry these criminal charges. The uncontroverted presence of a felony conviction is conclusive proof of guilt of the offense charged for disciplinary purposes. Fla. Bar Integr. Rule, art. XI, Rule 11.07(1). A referee is not empowered to go behind a criminal conviction. *The Fla. Bar v. Heller*, 473 So.2d 1250 (Fla. 1985): *The Fla. Bar v. Vernell*, 374 So.2d 473 (Fla. 1979). The denial of the subpoena and the refusal of the profferred evidence was not error and did not violate due process.

Respondent's argument on introduction of the indictment is also meritless. The judgment of conviction was conclusive proof of the commission of the felonies. The indictment merely showed that the convictions were obtained based on charges brought. The trier-of-fact normally has access to such charges even though they are not evidence of guilt.

We approve the referee's findings of facts and recommendations of guilt and discipline. Onett is disbarred effective immediately. Judgment for costs in the amount of $603.86 is hereby entered against Onett, for which sum let execution issue.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS DISBARMENT.

Original Proceeding--The Florida Bar

John F. Harkness, Jr., Executive Director, John T. Berry, Staff Counsel and James N. Watson, Jr., Bar Counsel, Tallahassee, Florida.

for Complainant

Shalle Stephen Fine, Miami, Florida,
for Respondent

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, APRIL 15, 1987

CASE NO. 67,622

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

On consideration of the motion for rehearing filed by attorney for respondent, and response thereto,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy
Sid J. White
Clerk of Supreme Court
[Supreme Court Seal]

C
cc: Shalle Stephen Fine, Esquire
John T. Berry, Esquire
James N. Watson, Jr., Esquire
Hon. Stephan P. Mickle, Judge

Exhibit C

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CONFIDENTIAL

Case No.
(TFB Case No. 04B86N18)

THE FLORIDA BAR,

Complainant,

v.

GEORGE L. ONETT,

Respondent.

COMPLAINT

THE FLORIDA BAR, Complainant, files this complaint against GEORGE L. ONETT, Respondent, pursuant to article XI of the Integration Rule of The Florida Bar, as amended, and alleges:

1. Respondent is, and at all times mentioned in this complaint was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

2. From on or about November, 1979, to sometime in 1981, Respondent and Harold B. Haimowitz, along with others, sought to extort $15,000 from a local Jacksonville restaurateur in his efforts to obtain a liquor

license for his restaurant. Respondent accepted $7,500 cash as a partial payment towards the total extortionate amount.

3. During this same time period, Respondent and his co-extortionists sought to defraud the citizens of the State of Florida, the Department of Business Regulation, and the Division of Alcoholic Beverages and Tobacco with regard to their review and approval of the restauranteur's liquor license application. Respondent perpetrated the fraud through intentional misrepresentation and concealment of relevant information.

4. During the investigation of these crimes, Respondent perjured himself before a federal grand jury.

5. As a result of the actions referenced to in paragraphs 2-4, Respondent was convicted of six felony counts by United States District Court for the Middle District of Florida. These felonies included conspiracy to use and cause to be used the U.S. Postal Service to execute a scheme to defraud and for obtaining property by means of false and fraudulent pretenses and representations; conspiracy to obstruct interstate commerce by extortion; obstructing interstate commerce by extortion; mail fraud; and making false declarations while under oath before a Federal Grand Jury; all in violation of Title 18, U.S.C., Sections 371, 1341, 1623, 1951 and 2. A copy of the Judgment and Commitment Order is attached as Exhibit A and serves as conclusive proof of Respondent's misconduct referenced in paragraphs 2-4.

6. By reason of the foregoing, Respondent has violated Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule); 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude); 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice); and 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law.).

NOTICE REGARDING WAIVER OF CONFIDENTIALITY

Please note pursuant to Florida Bar Integration Rule, article XI, Rule 11.12(1)(d) effective October 1, 1979, the Respondent in these proceedings may file a Motion to Maintain Confidentiality for the protection of a client with the court or appointed referee within twenty (20) days of this filing or confidentiality is automatically waived as to the Complaint and all further proceedings in this case.

United States District Court

DISTRICT OF IDAHO

JACKSON DIVISION

UNITED STATES OF AMERICA

vs.

GLENN L. GATT

DOCKET NO. 81-6-Cr-J-BU

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date: MONTH JULY, DAY 2, YEAR 1982

PLEA: [ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Arthur W. Tifford and Shalle S. Fine (Retained)
(Name of counsel)

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to use and cause to be used the U.S. Postal Service to execute a scheme to defraud and for obtaining property by means of false and fraudulent pretenses and representations; conspiracy to obstruct interstate commerce by extortion; obstructing interstate commerce by extortion; mail fraud; and making false declarations while under oath before a Federal Grand Jury; all in violation of Title 18, U.S.C., Sections 371, 1341, 1623, 1951 and 2, as charged in Counts 1, 2, 4, 9, 18, and 19 of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the execution of the sentence of the Attorney General of his authorized representative for imprisonment for a period of FIVE (5) YEARS and FINED $7,500.00 on Count 1; FIVE (5) YEARS and FINED $7,500.00 on Count 2, said term of imprisonment to run concurrently with the sentence imposed on Count 1; FIVE (5) YEARS and FINED $7,500.00 on Count 18, said term of imprisonment to run concurrently with the sentences imposed on Counts 1 and 2; and on condition that as to Counts 1,2 and 18, the defendant be confined in a jail-type or treatment institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of FOUR AND ONE-HALF (4½) YEARS, upon the standing conditions of probation, to commence immediately upon defendant's release from confinement.

IT IS FURTHER ADJUDGED that the imposition of sentence on Counts 4, 9 and 19 herein is suspended and the defendant is placed on probation for a period of FOUR AND ONE-HALF (4½) YEARS on each count, to run concurrently, upon the standing conditions of probation. Said periods of probation shall run consecutive to the term of imprisonment, but concurrently with the period of probation imposed on Counts 1,2, and 18, and shall commence immediately upon defendant's release from confinement.

IT IS FURTHER ADJUDGED that the defendant shall stand committed until the fines imposed herein are paid, or until the defendant is otherwise discharged by due course of law. The order that the defendant stand committed is stayed until July 2, 1983.

(Total confinement sentence is SIX (6) MONTHS, total probation is FOUR AND ONE-HALF (4½) YEARS, and total fine is TWENTY-TWO THOUSAND, FIVE HUNDRED ($22,500.00) DOLLARS).

In addition to special conditions imposed above, it is ordered that the general conditions of probation set forth in this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the period or within maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE JUL 2 1982

BY: Deputy Clerk

JOHN H. MOORE, II

DATE JULY 2, 1982

Exhibit D

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CONFIDENTIAL

Case No. 67,622
(TFB No. 04B86N18)

THE FLORIDA BAR,

Complainant,

v.

GEORGE L. ONETT,

Respondent.

MOTION TO AMEND COMPLAINT

COMES NOW The Florida Bar, by and through its undersigned counsel, moves the Referee to issue an order pursuant to Rule 1.190(a) of the Florida Rules of Civil Procedure allowing Complainant to amend its complaint in the following manner:

1. Respondent's actions alleged in the complaint violated Integration Rule 11.02(3)(b) (the commission by a lawyer of any act contrary to honesty, justice, or good morals, whether the act is committed in the course of his relations as an attorney, whether committed within or outside the State of Florida, and whether the act is a felony or misdemeanor, constitutes a cause for

discipline) in addition to those violations alleged in paragraph 5 of the original complaint.

Respectfully submitted,

/s/ James N. Watson, Jr.

James N. Watson, Jr.
Branch Staff Counsel
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed by certified mail #640178, return receipt requested, to George L. Onett, Respondent, at his Bar address of 950 N.E. 96th Street, Miami Shores, Florida 33138, and by U.S. Mail to Shalle Stephen Fine, attorney for Respondent at the address of 46 Southwest First Street, Miami, Florida 33130 on this 18th day of November, 1985.

/s/ James N. Watson, Jr.

James N. Watson, Jr.
Branch Staff Counsel

Exhibit E

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CONFIDENTIAL

CASE NO. 67,622

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

ANSWER AND AFFIRMATIVE DEFENSES

FL Bar No. 024694

Respondent files his Answer and Affirmative Defenses to the Complaint in this case and says:

1. He denies the allegations of paragraphs 2, 3, 4 and 6 of the Complaint.

2. Answering paragraph 5, he says that he denies the allegation of the first sentence thereof. Further answering, he admits so much of the second sentence thereof as recites the titles of crimes prescribed by the various sections of Title 18, U.S. Codes referred to therein, but denies that he has been validly convicted thereof. Answering the third sentence thereof, he admits the authenticity of the Judgment and Commitment

Order attached as Exhibit "A", but denies that it serves as conclusive proof of his misconduct. On the contrary, he incorporates his Affirmative Defenses set forth below.

3. Affirmatively answering, he avers that his asserted conviction in the case identified in Exhibit "A" to the Complaint, was had after waiver of jury trial by a Court who in Respondent's belief was disqualified from sitting as Judge in his cause. Further Affirmatively answering, Respondent asserts and avers that for the Florida Bar to attempt to proceed to impose any punishment or sanction upon him resulting from that conviction and proceeding, his civil rights as preserved to him by the Constitution of the United States and by Federal Statutes, specifically including without limitations, Title 28, U.S. Code §1983 and would subject the Florida Bar to an action for injunction pursuant to that statute and other available remedies.

WHEREBY having fully answered, Respondent prays that the Complaint be dismissed.

Respectfully submitted,

/s/ Shalle Stephen Fine

SHALLE STEPHEN FINE
Attorney for Respondent
370 Minorca, Suite 15
Coral Gables, Florida 33134
(305) 444-8845

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by mail to: James R. Watson, Jr., Esquire, The Florida Bar, Tallahassee, Florida 32301, this 27th day of September, 1985.

/s/ Shalle Stephen Fine

SHALLE STEPHEN FINE

Exhibit B

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CONFIDENTIAL

CASE NO. 67,622
(TFB NO. 04B86N18)

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

REPORT OF THE REFEREE

I. SUMMARY OF THE PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to The Florida Bar Integration Rule, article XI, the following occurred:

On September 10, 1985, the Florida Bar filed its complaint against Respondent and on September 27, 1985 Respondent filed his answer. On November 1, 1985, The Florida Bar filed its Response to the Motion to Maintain Confidentiality in response to Respondent's Motion to Maintain Confidentiality which was filed on September 27, 1985. The Florida Bar filed its Request for Admissions and a Motion to Amend Complaint on November 18, 1985. Respondent filed an Objection to

Request for Admissions on December 18, 1985. The Bar responded to the Objection on January 2, 1986. The aforementioned pleadings and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED.

1. Respondent is, and at all times mentioned in this complaint was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

2. From on or about November, 1979, to sometime in 1981, Respondent and Harold B. Haimowitz, along with others, sought to extort $15,000 from a local Jacksonville restaurateur in his efforts to obtain a liquor license for his restaurant. Respondent accepted $7,500 cash as a partial payment towards the total extortionate amount.

3. During this same time period, Respondent and his co-extortionists sought to defraud the citizens of the State of Florida, the Department of Business Regulation, and the Division of Alcoholic Beverages and Tobacco with regard to their review and approval of the restaurateur's liquor license application. Respondent perpetrated the fraud through intentional misrepresentation and concealment of relevant information.

4. During the investigation of these crimes, Respondent perjured himself before a federal grand jury.

5. As a result of the actions referenced to in paragraphs 2-4, Respondent was convicted of six felony counts by United States District Court for the Middle District of Florida. These felonies included conspiracy to use and cause to be used, the U.S. Postal Service to execute a scheme to defraud and for obtaining property by means of false and fraudulent pretenses and representations; conspiracy to obstruct interstate commerce by extortion; obstructing interstate commerce by extortion; mail fraud; and making false declarations while under oath before a Federal Grand Jury; all in violation of Title 18, U.S.C., Sections 371, 1341, 1623, 1951 and 2. A copy of the Judgment and Commitment Order is attached as Exhibit A and serves as conclusive proof of Respondent's misconduct referenced in paragraphs 2-4.

6. By reason of the foregoing, Respondent has violated Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule); 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude); 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice; and 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law).

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY

DR 1-102(A)(a) (a lawyer shall not violate a disciplinary rule).

DR 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude).

DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law.

Integration Rule 11.02(3)(b) (the commission by a lawyer of any act contrary to honesty, justice, or good morals, whether the act is committed in the course of his relations as an attorney, whether committed within or outside the State of Florida, and whether the act is a felony or misdemeanor, constitutes a cause for discipline).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

A) Disbarment from The Florida Bar;

B) Payment of $603.86 to The Florida Bar, representing its costs in bringing this action. Such costs shall be paid within thirty (30) days of the date of the Supreme Court's Order imposing discipline.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 56 years old

Date Admitted to Bar: November 4, 1966

Prior Discipline: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Referee Level

1.	Administrative Costs	$150.00
2.	Court Reporter and Transcript Costs	320.36
3.	Bar Counsel Travel and Expenses	133.50
	TOTAL	$603.86

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment on this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED this 20th day of August, 1986.

/s/ Stephan P. Mickle

STEPHAN P. MICKLE
Referee

Copies to:
James N. Watson, Jr., Bar Counsel of The Florida Bar
George L. Onett, Respondent
Shalle Stephen Fine, Attorney for Respondent

EXHIBIT A

United States District Court

DISTRICT OF [illegible]

[illegible]

GEORGE L. GENT

DOCKET NO. 01-6-Cr-J-JH

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: JULY DAY: 2 YEAR: 1982

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Arthur W. Tifford and Shalle S. Fine (Retained)
(Name of counsel)

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to use and cause to be used the U.S. Postal Service to execute a scheme to defraud and for obtaining property by means of false and fraudulent pretenses and representations; conspiracy to obstruct interstate commerce by extortion; obstructing interstate commerce by extortion; mail fraud; and making false declarations while under oath before a Federal Grand Jury; all in violation of Title 18, U.S.C., Sections 371, 1341, 1623, 1951 and 2, as charged in Counts 1, 2, 4, 9, 18, and 19 of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the sentence [illegible] by the Attorney General in his authorized representative for the imprisonment of the defendant. FIVE (5) YEARS and FINED $7,500.00 on Count 1; FIVE (5) YEARS and FINED $7,500.00 on Count 2, said term of imprisonment to run concurrently with the sentence imposed on Count 1; FIVE (5) YEARS and FINED $7,500.00 on Count 18, said term of imprisonment to run concurrently with the sentences imposed on Counts 1 and 2; and on condition that as to Counts 1,2 and 18, the defendant be confined in a jail-type or treatment institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of FOUR AND ONE-HALF (4½) YEARS, upon the standing conditions of probation, to commence immediately upon defendant's release from confinement.

IT IS FURTHER ADJUDGED that the imposition of sentence on Counts 4, 9 and 19 herein is suspended and the defendant is placed on probation for a period of FOUR AND ONE-HALF (4½) YEARS on each count, to run concurrently, upon the standing conditions of probation. Said periods of probation shall run consecutive to the term of imprisonment, but concurrently with the period of probation imposed on Counts 1,2, and 18, and shall commence immediately upon defendant's release from confinement.

IT IS FURTHER ADJUDGED that the defendant shall stand committed until the fines imposed herein are paid, or until the defendant is otherwise discharged by due course of law. The order that the defendant stand committed is stayed until July 2, 1983.

(Total confinement sentence is SIX (6) MONTHS, total probation is FOUR AND ONE-HALF (4½) YEARS, and total fine is TWENTY-TWO THOUSAND, FIVE HUNDRED ($22,500.00) DOLLARS).

[illegible] special conditions imposed above, it is hereby ordered that the general conditions and terms listed on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, up to the maximum period permitted by law, at any time during the probation period or after the probation period for the purpose of [illegible] during the probation period.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE JUL 2 1982

BY [signature] DEPUTY CLERK

[signature]
JOSEPH H. MOORE, II
Date JULY 2, 1982

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,622
(CONFIDENTIAL)

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

PETITION FOR REVIEW

The Respondent George L. Onett petitions for review of the Report of the Referee dated August 20, 1986, and mailed August 21, 1986, and specifies the following portions of the Referee's Report sought to be reviewed:

Section II, paragraphs 2, 3, 4, 5, and 6;

Section IV, subsections A and B;

Section VI, (Petitioner does not contest the amounts of costs but rather entitlement thereto based on his challenge to the findings).

Respectfully submitted,

/s/ Shalle Stephen Fine

SHALLE STEPHEN FINE
Attorney for Petitioner
46 S.W. First Street, Suite 201
Miami, Florida 33130
Tel. (305) 358-1515

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing was furnished by mail to JAMES N. WATSON, JR., Bar Counsel of the Florida Bar, The Florida Bar, Tallahasse, Florida 32301, this 16 day of September, 1986.

/s/ Shalle Stephen Fine

SHALLE STEPHEN FINE

Supreme Court of Florida
Tallahassee 32301

SID J. WHITE
CLERK
DEBBIE CAUSSEAUX
CHIEF DEPUTY CLERK

TELEPHONE
904-488-0125

December 4, 1986

Shalle Stephen Fine, Esquire
46 S. W. First Street, Suite 201
Miami, Florida 33130

Re: The Florida Bar vs. George L. Onett
Case No. 67,622

Dear Mr. Fine:

At the direction of the Chief Justice, the above case has been submitted to the Court without oral argument.

Most cordially,

/s/ Sid J. White
Sid J. White
Clerk Supreme Court.

SJW:sg

cc: James N. Watson, Jr., Esquire

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 67,622

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent,

PETITION FOR REHEARING

The Petitioner/Respondent, GEORGE L. ONETT, by and through counsel undersigned, petitions for rehearing directed to the Opinion of the Supreme Court of Florida dated February 26, 1987 and in support thereof shows that the Supreme Court of Florida overlooked or failed to consider each of the following separate and several points:

1. In deciding this case without the benefit of Oral Argument (although Oral Argument was requested), the Court takes the position that the Judgment of Conviction was not subject to attack and that consequently, the Subpoenas requested by your Petitioner did not have to be issued. In taking this position and assuming that it were correct, which it is clearly not, based on the arguments advanced in the briefs, nevertheless, it is a denial of fundamental due process to deny Petitioner the subpoenas he requested. The Supreme Court of Florida in *State Ex Rel Florida*

Bar vs. Evans, 94 So.2 730 (Fla. 1957) specifically held that due process requires that the accused lawyer shall be given full opportunity to explain the circumstances and otherwise offer testimony in excuse or mitigation of the penalty. We suggest that the testimony proffered would certainly go to excuse or mitigate the penalty if it did nothing else. Your own cases require that we be given the opportunity to present this testimony.

2. This case is obviously an awkward case. It raises the spectre of a tainted conviction by a Federal Court presided over by a judge of outstanding reputation and ability. It is not a pleasant subject. Nevertheless, we respectfully suggest that it will not go away. To perpetuate this state of affairs is unfair to Mr. Onett and it must be said, unfair to the judiciary and to Judge Moore. It perpetuates an aura of secrecy and an air of suspicion which stains the entire judicial process. That it hurts Mr. Onett is clear. But it is also evident that it casts an undeserved shadow on Judge Moore. While we have asserted and do assert that he may be in error, and while we would conclude that he may be stubborn, we have never charged, nor do we assert now that he is corrupt. To the contrary, we believe, as we have asserted, that if presented with the facts, and if the facts bear out what we assert in our proffer, Judge Moore would forthwith do the correct thing. If Mr. Onett did not receive the cold neutrality of an impartial judge in his trial, he ought not suffer for it. We respectfully suggest that the Supreme Court of Florida ought settle this case once, finally and forever. This matter should be opened up, examined and disposed of under the sunlight of the truth and not the cloud of suspicion.

WHEREFORE, Movant respectfully requests that this Court grant rehearing, set this cause for Oral Argument and quash the referee's report with directions to comply with the requirements of fundamental due process as requested and expressed herein and in our briefs.

Respectfully submitted,

/s/ Shalle Stephen Fine
SHALLE STEPHEN FINE
Attorney for Respondent
46 S. W. First Street
Suite 201
Miami, FL 33130

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to James N. Watson, Jr., Esq., Branch Staff Counsel, The Florida Bar, Tallahassee, FL 32301, this 12 day of March, 1987.

/s/ Shalle Stephen Fine
SHALLE STEPHEN FINE

EXHIBIT F

SHALLE STEPHEN FINE
ATTORNEY AT LAW
46 S. W. FIRST STREET, SUITE 201
MIAMI, FLORIDA 33130
(305) 358-1515

July 1, 1986

VIA FEDERAL EXPRESS—CONF. # TMB 340

The Honorable Stephan P. Mickle
Circuit Judge (Referee)
Allachua County Courthouse
Gainesville, Florida 32601

Re: The Florida Bar v. George L. Onett
Case No. 67,622 (Confidential)

Dear Judge Mickle:

Pursuant to your Honor's rules at Pre-Trial Conference, I enclose herewith the following in the referenced case:

1. Response to Pre-Trial Order.

2. Three Subpoenas for service by your office. With respect to those subpoenas, the one for Mr. Nuzum will, I presume, issue as of course. With respect to the subpoenas for Judge Rawls and Moore, we suggest that those subpoenas ought issue as of course also. If either Judge Rawls or

Judge Moore feel that there is a privilege which ought be asserted, that privilege belongs to them and they will, of course, have the opportunity to assert. If they do not assert it, it will be waived like any other privilege.

I would like, of course, to get the subpoenas served as quickly as possible so, if your secretary will call me collect I will arrange to have them picked up at your chambers for service.

Thank you for your kind attention to this matter.

Very truly yours,

/s/ Shalle Stephen Fine
SHALLE STEPHEN FINE

SSF/lp
cc: James R. Watson, Jr., Esquire
via Federal Express
CONF. # TMB 340

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CONFIDENTIAL

CASE NO. 67,622
(TFB No. 024694)

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

SUBPOENA
DUCES TECUM

TO: THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION
By and through the HONORABLE JOHN S. RAWLS
Old Capitol Building
Tallahassee, Florida

YOU ARE HEREBY COMMANDED to appear before the Honorable STEPHAN P. MICKLE, Referee, at the Allachua County Courthouse in Gainesville, Florida on July 9, 1986 at 9:30 a.m. to testify in the above-styled cause and have with you at the said time and place the following:

1. Minutes of the meeting of the Florida Judicial Qualifications Commission from January 1, 1979 through December 31, 1980.

2. Transcripts of meetings of the Florida Judicial Qualifications Commission for the period January 1, 1979 through December 31, 1980.

3. Any and all memoranda, notes, correspondence, records of telephone conversations or oral discussions, memos to file or other written material in the files or possession of the Judicial Qualifications Commission or its officers or employees respecting any report, complaint, investigation or proceeding of the Commission or of any other person, firm, corporation or agency reporting to or having contact with the Commission or any of its officers, agents or employees and resulting from any act, deed, complaint or occurrence had or allegedly had in Duval County, Florida during the period of 1-1-79 through 12-31-80.

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

WITNESS my hand and seal as Referee on July __, 1986.

(SEAL)

STEPHAN P. MICKLE
Circuit Judge (Referee)

SHALLE STEPHEN FINE, ESQUIRE
Attorney for Respondent
46 S. W. First Street
Miami, Florida 33130
(305) 358-1515

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CONFIDENTIAL

CASE NO. 67,622
TFB No. 024694

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

SUBPOENA

TO: THE HONORABLE JOHN H. MOORE, II
UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

YOU ARE HEREBY COMMANDED to appear before the Honorable STEPHAN P. MICKLE, Referee, at the Allachua County Courthouse in Gainesville, Florida on July 9, 1986 at 9:30 a.m. to testify in the above-styled cause and have with you at the said time and place the following:

Not Applicable

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

WITNESS my hand and seal as Referee on July __, 1986.

(SEAL)

STEPHAN P. MICKLE
Circuit Judge (Referee)

SHALLE STEPHEN FINE, ESQUIRE
Attorney for Respondent
46 S. W. First Street
Miami, Florida 33130
(305) 358-1515

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CASE NO. 67,622
TFB No. 024694

THE FLORIDA BAR

Complainant,

vs.

GEORGE L. ONETT,

Respondent.

CONFIDENTIAL

DISCIPLINARY MATTER CONDUCTED UNDER AUTHORITY OF THE INTEGRATION RULE OF THE FLORIDA BAR

Pursuant to Notice, the matter contained herein came on for hearing before THE HONORABLE STEPHAN P. MICKLE, duly appointed Referee, at the Alachua County Courthouse, Gainesville, Florida, on Wednesday, July 9, 1986, commencing at 10:45 a.m. and in the presence of Lori Williams, Court Reporter, Gainesville, Florida.

APPEARANCES:
(See Page 2)

MR. FINE: That's it, Judge, as far as direct.

JUDGE MICKLE: Any cross?

MR. WATSON: No cross.

MR. FINE: May Mr. Nuzum be excused to return to his dinner party tonight? We do appreciate your coming.

JUDGE MICKLE: Certainly. All right.

(Witness excused)

MR. FINE: Judge, I would like to take about a five-minute recess, because I now have a judgment to make—

JUDGE MICKLE: All right.

MR. FINE: —with respect to how we are going to proceed.

JUDGE MICKLE: Very well. We'll recess for five minutes.

MR. FINE: Thank you.

(Whereupon, a short recess was held.)

JUDGE MICKLE: Ready to proceed, Mr. Fine?

MR. FINE: Yes, sir.

If the Court please, at this time, I would like to take up the question of the subpoenas which we tendered, one to the Honorable John Rawls, and the other to the Honorable John Moore, the Federal District Judge who presided over Mr. Onett's trial, which were not issued

by the Court, and I would like, for the purposes at least of preserving my record, assert by way of proffer that if subpoenaed and if required to testify to produce the records of the Judicial Qualifications Commission, Judge Rawls testimony and those records would reflect that Judge Moore, while the Chairman of the Florida Judicial Qualifications Commission, had had pre-trial contact with the investigation which produced the FBI investigation, which produced Mr. Onett's indictment, which would have been sufficient under the present Federal Recusal Statute to make it appear to a reasonable man that Judge Moore could not have been impartial in that trial, even if the case were tried with a jury and not tried non-jury.

And in support thereof, I would point out that Judge Moore, in a Chambers conference, held in his Chambers, on July 12, 1983, indicated that he had some pre-trial contact with the investigation, and further indicated —I think probably the thing to do is offer into evidence, on our behalf, the transcript of that Chambers conference in Case No. 81-65-CR-J-16, in the United States District Court, Middle District of Florida, United States of America vs. Onett, and we would offer that as our exhibit, Your Honor.

JUDGE MICKLE: Are you offering this as part of your proffer?

MR. FINE: Yes, sir. As part of our proffer

And during that Chambers conference, Judge Moore indicated that he had had some peripheral contact with the investigation. And I'm characterizing it as peripheral, I think there is no question it was

peripheral. And he also indicated that he had totally forgotten about it, and at the time of the trial, in his own words, on page 10, it looks like:

"The Court: Listen, I got bombarded with so many cases here, I didn't have time to think about the past."

I may say, Judge Moore had just ascended the Federal bench and this was his first major trial, and he had concededly a new evidence code, a new set of procedural rules and whatnot, not to mention five lawyers clammering at him all the time.

But nevertheless, there is no question but that there was pre-trial contact. The real question is, the extent of it, and whether that extent was so disabling as to require that the conviction be vitiated.

And what we are saying is, that the evidence, which would be presented by Judge Rawls, and the records of the Judicial Qualifications Commission, would establish that. And we believe and proffer that Judge Moore, if he had the opportunity to review that evidence and those documents, would concede candidly, because he was candid in the Chambers conference to the extent of his recollection and his ability at that moment. And this was the first that it had been approached to him, that he would concede that he did not meet the standard of the statute in light of his review of that evidence.

So we think that is essential, obviously, to Mr. Onett's position in this cause, because the whole case hinges here on the conviction.

If you take the conviction out—if you take that judgment of conviction away from this record, there is just nothing to charge Mr. Onett with. That's the only thing that prevents it, is that judgment of conviction, and I suggest to you that in a situation where the State of Florida is trying to take Mr. Onett to a disciplinary proceeding through the Supreme Court and the Florida Bar, and where the State of Florida, through the Judicial Qualifications Commission, is sitting on evidence that would vitiate the conviction, that they are trying to beat him over the head with here, that that is not only not fair play, but that the State is actively prevented from doing it.

I would suggest to you, by way of analogy, if this were a criminal case and they were trying to prosecute Mr. Onett, and it developed that another department of the State was sitting on evidence that was made secret by whatever process, and that evidence would exonerate or tend to exonerate or exculpate Mr. Onett, that Your Honor wouldn't consider for a moment allowing the State to prosecute through one arm and conceal through the other. And I suggest to you that the same ought to be true here, and this is a penal proceeding; that if the State wants to penalize Mr. Onett, they are entitled to do it, Judge, if they can prove it; but they can't sit on the evidence that would exculpate Mr. Onett, that would allow us to say to the Judge who produced the document, that they want to hit him over the head with, I really shouldn't have been the one to make that decision, and go back to square one. And that's particularly true of Mr. Nuzum, who was the critical factor in the government's case, because he obviously was the man sitting at the neck of this bottle and whom this application had to pass through.

Number one is, Mr. Clean of the FBI, the guy who they picked to head up the Watergate investigation, he's brought into the department and placed just in the critical position where you can't get the license unless you go through him. He testified there wasn't the slightest attempt of anything out of the ordinary with respect to him. He testified he was aware of this application. He testified that Onett appeared after it was ongoing and Onett asked him what he had to do and he told him, and he recalled his testimony. He told him you have got to get Abbott on this license and Onett put Abbott on the license; and as soon as he did that, as soon as Onett put him on the license, as far as Nuzum was concerned, he was an applicant and he could be dealt with.

And the reason why he wasn't dealt with was not because of anything Onett did or didn't do. It was because Nuzum was accommodating the fellows in his old shop. You know, really, what happened here is, and it's a tight squeak for Nuzum, but Nuzum was in a situation where he's got an obligation to the people of the State of Florida to use his judgment and deny this application and he's got—and I feel for him, because I know something about old school ties and old friends and old shops—he's got this tie to his old shop. And he decided he was going to go with his old shop, and that's basically how this case came down.

If Nuzum had said to these fellows, "Hey, you run any sting you want, but I have got a job to do here and I'm going to get this guy. You just told me he's a felon and he's bad. I'm going to blow him out." That would have been the end of this whole thing.

So what I'm saying to you is, and this is stated in the record, it seems to me before we go any further, we ought to be entitled to inquire as to what the JQC has in its files, and let me point something out to you about the JQC and the constitutional provision with respect to the JQC.

Your Honor knows, and we all know, that there is a provision saying that the proceedings of the JQC are secret until the time when they file a charge and it becomes public. But there is an exception to that in the constitutional provision.

The constitutional provision says that either the Speaker of the House of Representatives, in his capacity with respect to impeachment proceedings, or the Governor, because he has the ability to remove a judicial officer from office on his own, can request and must be given that supposedly secret information for the purpose of making an investigation into the possibilities of impeachment or removal from office, and there is no constraint on the Speaker or the House or the Governor or the Governor's office to keep any of that information secret once it passes to them. In other words, there is a built in—two built in gigantic breaches in that wall of secrecy.

Now, that provision was enacted, obviously, for the purpose of protecting an innocent judicial officer who is sitting from the attack of anyone who wants to write some wacky letter to the JQC saying, "Oh, Judge Smith is doing this and that and the other." And that's a valid purpose. But I suggest to you that keeping secret what would help Onett with respect to Judge Moore in his capacity as chairman here was never envisioned as part

of that purpose, and I'm suggesting to you that both purposes—the purpose of doing justice in this case and the purpose of protecting innocent judicial officers—can be accomplished and accomplished easily.

And the way it would be done is that I presume Your Honor or counsel would make an in camera inspection. And we are not interested in any judges names, who cares what those names were. They are immaterial to us and to this case. They can be inked out, scratched out, blacked out, removed totally.

—What we are interested in is what those records and Judge Rawls testimony was, which at the moment—of course, it would also be totally confidential—would tell Your Honor about Judge Moore's relationship to the investigation so that we can, as I say, refresh Judge Moore's recollection, either directly, if he will respond to the subpoena, or indirectly through a motion, once we develop this information and give—all I have been trying to do for three years is to get the records to Moore so that he can make a determination that he was or he wasn't in possession of the full record, because once he does that, then we can—if we don't like that, we can take it somewhere else and get the Eleventh Circuit to say we're right or we're wrong. And if we're wrong, we're wrong, and this case is, you know, that aspect of this case is dead.

But if we are right, if we are right, it's really more than an injustice. It's an outrage, that this fellow can face the loss of his professional license based on a conviction that may very well be subject to being quashed; and as I say, where there is an indication in the record by Judge Moore.

This isn't something that's coming out of the blue that I'm fishing out of the St. John's River. I mean, here's a situation where Judge Moore himself recalled and candidly acknowledged that he had some contact. So I say, now what we are talking about is the extent of the contact, and the extent to which his recollection will be refreshed and the record will refresh his recollection.

JUDGE MICKLE: Mr. Fine, I think we've moved from your proffer of evidence into your argument on whether or not the subpoena should be issued.

MR. FINE: Yes, sir. I combined them both, obviously.

JUDGE MICKLE: You had a document there you wanted to—

MR. FINE: Yes, sir.

JUDGE MICKEL: —attach to the proffer?

MR. FINE: Yes, sir.

JUDGE MICKLE: You want to make a proffer of Judge Rawls' testimony?

MR. FINE: Yes, sir. What Judge Rawl's testimony would be, if he were called.

That he is the legal counsel, the general counsel for the Florida Judicial Qualifications Commission; that he was the general counsel at all times that are material to us here; that as general counsel, he has access to and

custody of the papers, records, minutes and documents of the Florida Judicial Qualifications Commission; that he knows, which I can't conceive to be an issue, that Judge Moore was, in fact, the Chairman of that Commission prior to his acceding to the Federal bench; and that the documents in his possession, custody and control would show that Judge Moore had had pre-trial contact with the investigation which produced the indictments relating to Abbott's Restaurant and Mr. Onett, Haimowitz, Scarborough and Ritter; and that the extent of that pre-trial contact, as indicated, would be such that Judge Moore should not, under the present Federal statute, have sat on the case. And I'm saying that is what his testimony would show if he were permitted to come here and testify.

I may say when I make that statement, I'm not trying to cast dispersions on Judge Moore, because the reason why I wanted Judge Moore to come here is that, in my judgment, if he were presented with the evidence that Judge Rawls could produce and have the opportunity to review it, Judge Moore would tell you candidly, that having had his memory refreshed and having had an opportunity to go over the record and having had an opportunity to place himself back in the situation, that he would agree with the position and would grant the motion that we would obviously make immediately, termination of this hearing before him, to vacate this conviction under the provision of—I believe it's titled 28, Section 2255, but I wouldn't want to be held to the Section number. But there is an appropriate provision in the Federal statute, as there is in ours, for the vacation of this, and if not, coram nobis would rule in any event.

That's our position. That's what we think the evidence would show.

JUDGE MICKLE: Is there any other evidence that you would like to present?

MR. FINE: Well, may I have a ruling on that?

I can't force Your Honor, but how Your Honor rules on that is obviously going to be impactive.

JUDGE MICKLE: The request you made—

MR. FINE: Yes, sir.

JUDGE MICKLE: —in your letter and that you sent up to my office, a subpoena duces tecum for Judge Rawls and Judge Moore, was denied by the Court.

MR. FINE: All right.

JUDGE MICKLE: And for the record, I'm going to reconfirm that denial.

MR. FINE: All right, sir.

JUDGE MICKLE: Any other evidence you would like to present?

MR. FINE: Yes. I think I would like to call Mr. Onett.

JUDGE MICKLE: All right.

(Thereupon, GEORGE L. ONETT, having been called as a witness on behalf of the Respondent, and being first duly sworn by the Referee, testified as follows:)